

ORIGINAL

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January 10, 2005

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JAN 10 2005

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

Re: Joint Petition for Waiver of the Definition of  
"Study Area" of the Appendix-Glossary of Part 36 of the  
Commission's Rules, Petition for Waiver of Sec.  
69.3(e)(11) of the Commission's Rules. CC Doc. No.  
96-45

Dear Ms. Dortch:

Attached please find an original and four copies of the Joint Petition for of the Definition of  
"Study Area" being filed by Blue Valley Telecommunications, Inc. and United Telephone Company of  
Kansas. The Petition also includes a request by Blue Valley for waiver of Section 69.3(e)(11) of the  
Commission's Rules.

The requisite filing fee and FCC Form 159 Remittance Advice is being submitted by Courier to  
Mellon Bank, Pittsburgh, Pennsylvania on this date.

Please acknowledge receipt on the "stamp and return" duplicate document attached for this  
purpose. Please contact me if there are any questions regarding this matter.

Sincerely yours

  
David Cosson  
Counsel to Blue Valley Telecommunications, Inc.

No. of Copies rec'd  
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JAN 10 2005

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of

Blue Valley Telecommunications, Inc.

and

United Telephone Company of Kansas

Joint Petition for Waiver of the  
Definition of "Study Area" of the  
Appendix-Glossary of Part 36 of the  
Commission's Rules

CC Docket No. 96-45

To: The Commission

**JOINT PETITION FOR EXPEDITED WAIVER**

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,<sup>1</sup> Blue Valley Telecommunications, Inc. ("Blue Valley") and United Telephone Company of Kansas ("United") (together, "Petitioners"), by their attorneys, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules. Additionally, Blue Valley seeks a waiver of Section 69.3(e)(11) of the Commission's Rules concerning participation in the National Exchange Carrier Association ("NECA") carrier common line tariff.

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<sup>1</sup> 47 C.F.R. § 1.3.

Petitioners request these waivers to enable Blue Valley to complete its proposed purchase from United of the latter's Onaga and Westmoreland telephone exchanges in Kansas ("the exchanges"). Petitioners also request that the exchanges be removed from United's study area in Kansas and added to Blue Valley's incumbent study area.<sup>2</sup>

The Commission is requested to review and approve this Petition expeditiously. The facts and circumstances supporting grant are similar in material respects to those involved in waiver requests that have been approved recently.<sup>3</sup> Prompt Commission approval will enable Petitioners to focus time and resources on the exchanges to be served immediately following the purchase transaction, which Petitioners seek to close on or about March 1, 2005.

## **I. INTRODUCTION AND SUMMARY**

United is a price cap incumbent local exchange carrier ("ILEC") that owns and operates approximately 72,000 access lines in 63 exchanges in the state of Kansas. United owns and operates approximately 811 access lines in the Onaga exchange, 775 in the Westmoreland exchange,—a total of only 1586 lines that are the subject of this Petition. These exchanges are part of the study area referred to by the Universal Service Administrative Company ("USAC") as

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<sup>2</sup> As described below, Blue Valley's ILEC operations have a study area code, 351187, distinct from that of its CLEC operations.

<sup>3</sup> See, e.g., Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c), Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) ("Dickey Rural Order"); Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area"

study area code 411842. After the transaction, United will continue to provide local telephone service in Kansas and will retain its study area for its remaining exchanges.

Blue Valley owns and operates, as a cost study ILEC, approximately 1463 access lines in 10 exchanges in the state. It intends to bring the purchased exchanges into its ILEC study area.

As will be discussed in more detail below, the factors that the Commission requires for a study area waiver are all present in this case: (1) the transfer of the exchanges from United to Blue Valley will not adversely impact the Universal Service Fund ("USF"), (2) the State Corporation Commission of the State of Kansas ("KCC") has approved this proposal, and (3) the public interest will be served by granting the waiver.

Related to this Petition, on August 20, 2004 the Petitioners filed an Application pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"),<sup>4</sup> seeking the Commission's consent to transfer control of the exchanges being acquired by Blue Valley. The application was granted on October 8, 2004.<sup>5</sup> Blue Valley will provide to customers and to the Commission the requisite timely anti-slamming notices required by Section 64.1120 of the Commission's rules.

## **II. WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED.**

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's

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Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion & Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) ("Baltic Order").

<sup>4</sup> 47 U.S.C. § 214(a).

<sup>5</sup> Public Notice, Notice of Streamlined Domestic 214 Application Granted, WC Doc. No. 04-346, DA 04-3233, Oct. 8, 2004..

Rules “freezes” the definition of “study area” to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high cost support,<sup>6</sup> the Commission has recognized that changes “that result from the purchase or sale of exchanges in arms-length transactions” do not necessarily raise the concerns which prompted the freeze.<sup>7</sup> The proposed sale to Blue Valley is an arm’s length transaction.

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.<sup>8</sup> Such a result would not serve the Commission’s policy objective of ensuring that carriers’ actual costs are reflected in their accounting so that they can accurately set just, reasonable and non-discriminatory rates.<sup>9</sup> Inasmuch as Blue Valley’s proposed acquisition results from an arm’s length negotiation process with United, the standards for waiver of the freeze are met in this instance.

**A. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.**

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<sup>6</sup> See MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

<sup>7</sup> See, e.g., Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr. Bur. 1990).

<sup>8</sup> *Amendment to Part 36 to the Commission’s Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) (“Part 36 NPRM”).

<sup>9</sup> United will adjust, pursuant to 47 C.F.R. § 61.45, its price cap prices to reflect removal of the transferred access lines, as applicable.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost support fund for the year.<sup>10</sup> The proposed transaction will produce no such adverse impact, as Section 54.305 of the Commission's rules provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.<sup>11</sup>

Notwithstanding Section 54.305(a) of the Commission's Rules, however, Blue Valley may still be eligible to receive additional limited high cost support for the purchased access lines. First, Blue Valley may eventually be eligible for limited "safety valve" support for new investments in the purchased assets.<sup>12</sup> Second, Blue Valley may be eligible for additional interstate common line support ("ICLS").<sup>13</sup>

Nevertheless, it is inconceivable that Blue Valley's additional support could rise to \$39 million—the figure that now approximates an aggregated one percent increase of annual high

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<sup>10</sup> See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("Eagle Order"); Norway Order, ¶ 9.

<sup>11</sup> 47 C.F.R. §54.305(a).

<sup>12</sup> See 47 C.F.R. § 54.305(b)-(f).

<sup>13</sup> See, 47 C.F.R. 54.902(b)

cost support.<sup>14</sup> First, safety valve support, to the extent Blue Valley would be eligible, is capped by rule.<sup>15</sup> Second, Blue Valley currently receives only an estimated \$797 in annual ICLS per line. By adding an additional 1586 lines to its study area, at the same per line support level, Blue Valley would receive only an additional estimated \$1,263,618 in annual ICLS.<sup>16</sup> Accordingly, this transaction is a non-event for purposes of the USF.<sup>17</sup>

**B. State Commission Approval.**

Petitioners' Joint Application to the KCC, requesting approval of their transaction was granted on December 27, 2004. Copies of the two orders in that proceeding are attached as Appendix A.

**C. Granting The Waiver Is In The Public Interest.**

The transfer of the two exchanges from United to Blue Valley will promote the public interest because it will provide the customers with new services from a locally-based carrier specializing in meeting the communications needs of the few rural communities it serves. Since 1956, Blue Valley has offered its customers access to local management, local service personnel,

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<sup>14</sup> USAC's most recent projections show annual high cost support exceeding \$3.9 billion. See USAC, HC01 - High Cost Support Projected by State by Study Area - 1Q2005.xls, online at <http://www.universalservice.org/> ("USAC HC01").

<sup>15</sup> See 47 C.F.R. § 54.305(b)-(f).

<sup>16</sup> Initially, ICLS for the acquired lines will be available based on the existing per line ICLS of the acquiring company. These amounts will be subject to true up once cost and revenue data are available. Actual amounts received will be disbursed on a monthly basis and are dependent on the timing of the grant of the waiver request, closing of the acquisition, and submission of updated line counts by the acquiring company.

<sup>17</sup> Blue Valley recognizes that as a result of the transaction, access lines in the pre-acquisition study area will be eligible for different amounts of high cost support than the access lines being

and local service centers.

Blue Valley intends to provide quality basic services to the exchange areas it is acquiring, and to improve the existing network where necessary. Blue Valley will install all new outside plant with Fiber-to-the-Home and packet switching capability and rehome the exchanges to its existing exchanges. The new facilities will offer a full menu of basic and advanced services including high speed Internet access and video services. Accordingly, the public interest would be better served if these operationally distinct exchanges were separated from the exchanges to be retained by United and placed in Blue Valley's study area.

### **III. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES IS WARRANTED.**

Blue Valley also requests a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Blue Valley from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Blue Valley to file interstate tariffs, and assume the cost and administrative burden associated with that process for a brief period. Moreover, the inclusion of the small number of acquired access lines in the NECA

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acquired from United. Blue Valley will adopt a methodology for excluding the costs associated with the acquired access lines from the costs associated with the pre-acquisition study area.



carrier common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.<sup>18</sup>

In light of the fact that Blue Valley is a very small carrier and that the administrative and financial burdens that could result in the absence of a waiver are great, Blue Valley requests a waiver of Section 69.3(e)(11) to the extent necessary for it to add these exchanges to its current study area and include them in the NECA pools upon the closing date of this acquisition.

#### **IV. CONCLUSION**

The immediate requests are substantially analogous to comparable requests routinely granted by the Commission for similarly situated carriers. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby allowing the affected customers to benefit from this acquisition as soon as possible.

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<sup>18</sup> See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).

Respectfully submitted,

**Blue Valley Telecommunications, Inc.**

By:   
David Cosson

Its Attorney

Kraskin, Lesse & Cosson, LLC  
2120 L Street, N.W., Suite 520  
Washington, DC 20037  
(202) 296-8890

January 10, 2005

**United Telephone Company of Kansas, Inc.**

By:   
Michael B. Fingerhut

Its Attorney

401 9<sup>th</sup> St. N.W. Suite 400  
Washington, D.C. 20004  
(202) 585-1909


VERIFICATION

STATE OF KANSAS)

) SS:


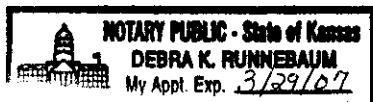
COUNTY OF MARSHALL )

Dennis W. Doyle, being duly sworn upon his oath deposes and says that he is an Assistant General Manager for Blue Valley Tele-Communications, Inc., that he has read and is familiar with the foregoing and believes that the statements made therein are true and correct to the best of his knowledge, information and belief.



Dennis W. Doyle

SUBSCRIBED AND SWORN to before me this 6th day of January, 2005.



Notary Public

My Appointment Expires: 3-29-07

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589  
Page 1 of 4

(1) LOCK BOX # <b>358140</b>		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Blue Valley Telecommunications, Inc.</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$6,840.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>1557 Pony Express Highway</b>			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY <b>Home</b>		(7) STATE <b>KS</b>	(8) ZIP CODE <b>66438-9762</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>785 799 3311</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0002-3312-62</b>		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME			
(14) STREET ADDRESS LINE NO. 1			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY		(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN)		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>BEA</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$6,840.00</b>	(27A) TOTAL FEE <b>\$6,840.00</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>David Cosson</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>David Cosson</u>		DATE <u>01/10/05</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

Invoice No.  
010605

Date  
01/06/2005

Invoice Amount  
\$6,840.00

Debit Memo Amt  
\$0.00

Description  
ONAGA/WESTMORELAND

\$6,840.00

GENERAL FUND

BLUE VALLEY TELE-COMMUNICATIONS, INC.

GENERAL FUND  
**BLUE VALLEY TELE-COMMUNICATIONS, INC.**

785-799-3311 or Toll Free 1-877-876-1228  
HOME, KANSAS 66438

UNITED BANK & TRUST  
823 BROADWAY  
MARYSVILLE, KANSAS 66508  
83-1503  
1011

CHECK NO. 039752

DATE  
01/06/2005

AMOUNT  
\$6,840.00

PAY EXACTLY

\*\*\*Six Thousand Eight Hundred Forty And 00/100\*\*\*

GENERAL FUND

FEDERAL COMMUNICATIONS COMMISSION

BLUE VALLEY TELE-COMMUNICATIONS, INC.

TO  
THE  
ORDER  
OF

KS 00000

*[Signature]*  
AUTHORIZED SIGNATURE  
*[Signature]*  
AUTHORIZED SIGNATURE

## **APPENDIX A**

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair  
Robert E. Krehbiel  
Michael C. Moffet

In the Matter of the Joint Application of )  
United Telephone Company of Kansas, Inc. )  
(United) and Blue Valley Tele- ) Docket No. 04-BVTT-780-COC  
Communications, Inc. (Blue Valley), Blue )  
Valley O&W Telecom, Inc. (Blue Valley )  
O&W) For Permission of United to Cease )  
Operating as a Telephone Public Utility in )  
its Onaga and Westmoreland Exchanges, to )  
Grant Blue Valley a Certificate of Public )  
Convenience for the Onaga and )  
Westmoreland Exchanges and for Authority )  
to Transfer Property, Plant and Equipment )  
of United Located in the Onaga and )  
Westmoreland Exchanges to Blue Valley )  
and Complete all matters Incident to the )  
Transfer. )

**ORDER AND CERTIFICATE**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

**Background**

1. On March 2, 2004, United Telephone Company of Kansas, Inc. (United), Blue Valley Tele-Communications, Inc. (Blue Valley), and Blue Valley O&W Telecom, Inc. (Blue Valley O&W) filed a joint application requesting a certificate of convenience for Blue Valley O&W, a subsidiary of Blue Valley, and approval of Blue Valley O&W's acquisition of the Onaga and Westmoreland exchanges from United, and concurrently requesting the Commission cancel United's certificate of convenience and authority previously granted for the two

exchanges. Blue Valley O&W's request for a certificate of convenience was docketed in this docket. United's request to cancel its certificates of convenience for the two exchanges, once the Commission granted Blue Valley O&W permission to acquire the two exchanges, was docketed in Docket No. 04-UTDT-781-CCS.

2. On April 2, 2004, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene and Motion for Protective Order. On April 9, 2004, the Commission issued an order granting CURB's Petition to Intervene and issued a Protective Order.

3. On July 6, 2004, United, Blue Valley, and Blue Valley O&W made a joint filing in this docket to amend some of the terms of the original agreement between the parties. On November 24, 2004, United and Blue Valley filed another amendment removing Blue Valley O&W from the joint application. Blue Valley indicated in the November 24, 2004 amendment that it would acquire the two exchanges directly instead of via its subsidiary Blue Valley O&W. Blue Valley also removed its request for an acquisition premium from the application.

4. On December 1, 2004, Commission staff (Staff) and Blue Valley filed a Joint Motion to Approve Stipulation and Agreement in this docket. United and CURB have indicated they do not object to the Stipulation and Agreement. On December 16, 2004, Staff and United filed a Joint Motion to Approve Stipulation and Agreement in Docket No. 04-UTDT-781-CCS. Blue Valley and CURB have indicated they do not object to the Stipulation and Agreement in that docket.

5. The Commission has been presented with a Stipulation and Agreement in this docket to which there is no opposition. The Stipulation and Agreement represents a compromise by Blue Valley and Staff on several contested issues. The law favors compromise and settlement of disputes. *Bright v. LSI Corp.*, 254 Kan. 854, 858, 869 P.2d 686 (1994). The Commission



finds that the Stipulation and Agreement is a fair and reasonable resolution of the issues in this proceeding and that granting Blue Valley a certificate to operate in the Onaga and Westmoreland exchanges (along with canceling United's certificate in Docket No. 04-UTDT-781-CCS) is in the public interest. The Commission adopts the Stipulation and Agreement with the caveats noted later in this order.

6. The Commission notes Blue Valley is registered as a domestic, not-for-profit corporation with the Kansas Secretary of State's office and is currently "active and in good standing."

7. Along with its application, Blue Valley submitted evidence in support of its fitness to operate as a telecommunications company in the State of Kansas. Staff reviewed the evidence provided in support of Blue Valley's technical expertise and asserted its belief that the company appears to have the managerial, technical, and financial capabilities to provide the proposed local exchange telecommunications service.

### **Findings and Conclusions**

8. The Commission has jurisdiction to supervise and control telecommunications public utilities doing business in Kansas pursuant to K.S.A. 66-1,188. Blue Valley is a telecommunications public utility pursuant to K.S.A. 66-1,187 and is therefore subject to the Commission's jurisdiction.

#### **A. Technical, Managerial and Financial Capabilities**

9. The Commission finds that Blue Valley has demonstrated sufficient managerial, technical and financial capabilities to operate as a telecommunications public utility. A review of the materials submitted demonstrates that Blue Valley has management and employees with

telecommunications experience. It is clear that Blue Valley possesses the requisite expertise and ability to provide efficient and sufficient local exchange and exchange access services.

### **B. Public Convenience and Necessity**

10. The Public Utilities Act, K.S.A. 66-101 *et seq.*, does not define the term public convenience. However, the term has been discussed by the Kansas Supreme Court. In *Central Kansas Power Co. v. State Corporation Commission*, 206 Kan. 670, 676, 482 P.2d 1 (1971), the Court stated:

Public convenience means the convenience of the public, not the convenience of particular individuals. [citations omitted.] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word 'necessity' means a public need without which the public is inconvenienced to the extent of being handicapped.

See also, *General Communications Systems, Inc. v. State Corporation Commission*, 216 Kan. 410, 418, 532 P.2d 1341 (1975); *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission*, 130 Kan. 777, 288 P.2d 755 (1930). Public convenience is a relative term, established by proof of the conditions existing in the territory to be served. *Atchison* at 781.

11. In *Central Kansas Power Co.* at 677, citing *Kansas Gas & Electric Co. v. Public Service Comm.*, 122 Kan. 462, 251 P.2d 1097, the Court stated as follows:

[i]n determining whether such certificate of convenience and necessity should be granted, (1) the public convenience ought to be the commission's primary concern; (2) the interest of public utility companies already serving the territory secondary; and (3) the desires and solicitations of the applicant a relatively minor consideration.

The Commission has considered the public convenience to be the primary factor in granting this certificate, as well as a consideration of the additional criteria cited in *Central Kansas Power Co.*, *supra*, and in the May 5, 1995 Order in Docket No. 190,492-U.

12. The Commission has taken all these matters into consideration in reviewing this application and finds that approving this application will benefit the public in the area to be served by Blue Valley. Blue Valley is a telecommunications company with long history of exemplary service to its customers in the state of Kansas and the Commission is satisfied Blue Valley will expand that exemplary service into the Onaga and Westmoreland exchanges.

### **C. Issuance of Certificate**

13. The Commission finds that it should grant the Joint Motion, approve the Stipulation, and issue Blue Valley a certificate of convenience and authority to provide incumbent local exchange telecommunications services in the Onaga and Westmoreland exchanges in accordance with the provisions of K.S.A. 66-131.

14. Blue Valley is required to file an annual report with the Commission and to notify the Commission of any changes in its structure or operation. Blue Valley must file an annual report with the Commission and pay any Commission assessments. Blue Valley shall also report its revenues, using the KUSF Carrier Remittance Worksheet, as well as any changes in its name or corporate structure, to the KUSF Administrator for Kansas Universal Service purposes.

15. Pursuant to paragraph 18 of the Stipulation and Agreement, United's revenues will be imputed to Blue Valley for KUSF assessment purposes. To ensure synchronization of all of the KUSF Year 9 calculations, the number of supportable and assessable access lines reported by United, as of September 30, 2004, will be imputed to Blue Valley for KUSF purposes. Pursuant to Schedule 8.1.2 of the March 2, 2004 application, Blue Valley will receive the same monthly KUSF support per line United receives for the Onaga and Westmoreland exchanges, reduced by the amount of Federal Universal Service Fund support United received as of September 30, 2004, for the exchanges. Subsequent to Year 9, Blue Valley will report its own

supportable and assessable lines, revenues, and Federal support receipts for KUSF purposes. Staff will calculate KUSF support for the two exchanges each year utilizing the KUSF model less Federal support receipts. However, the amount of KUSF support Blue Valley receives will be no less than the amount of support determined by the model less the offset for Federal support that has been calculated for Year 9. This process will remain in place until such time as Blue Valley seeks KUSF support for its own investments or the Commission initiates an audit.

16. Blue Valley shall file tariffs 30 days before the effective date of the transfer to add Onaga and Westmoreland to its list of local exchanges and to create a new rate group for local rates.

17. The metes and bounds descriptions of the Onaga and Westmoreland exchanges is as follows:

Onaga Exchange

Beginning at the center of Section 20, T5S, R11E, Nemaha County; thence east 3 miles; thence south 1 mile; thence east 2 ¼ miles; thence south 1 ½ miles to a point ¼ mile west of the southeast corner of Section 31, T5S, R12E; thence west approximately 1/8 mile to a point ¼ mile west of the northeast corner of Section 6, T6S, R12E, Pottawatomie County; thence south 4 ¾ miles to a point ¼ mile north and ¼ mile west of the southeast corner of Section 30, T6S, R12E; thence east ½ mile; thence south 4 miles; thence east 2 1/8 miles; thence south 1 ½ miles to a point ¼ mile south and 3/8 mile east of the northwest corner of Section 27, T7S, R12E; thence west 2 5/8 miles; thence south 4 ¼ miles to a point ¼ mile west and ½ mile south of the northeast corner of Section 18, T8S, R12E; thence west 3 ¾ miles; thence north 1 ¼ miles to a point ¼ mile south of the northwest corner of Section 10, T8S, R11E; thence west 4 ¾ miles to a point ¼ mile south and ¼ mile east of the northwest corner of Section 11, T8S, R10E; thence north 3 ½ miles to a point ¼ mile north and ¼ mile east of the southwest corner of Section 23, T7S, R10E; thence east ¼ mile; thence north 10 miles to a point ¼ mile north and ½ mile west of the southeast corner of Section 35, T5S, R10E; Marshall County; thence east 3 miles; thence north 2 ¼ miles to the point of beginning.

Westmoreland Exchange

Beginning at a point  $\frac{1}{4}$  mile north and  $\frac{1}{4}$  mile east of the southwest corner of Section 23, T7S, R10E, Pottawatomie County, Kansas; thence south  $3\frac{1}{2}$  miles; thence west 3 miles; thence south 1 mile; thence west  $1\frac{3}{4}$  miles; thence south  $2\frac{1}{4}$  miles; thence west 10 miles to a point  $\frac{1}{2}$  mile north and  $\frac{1}{2}$  mile west of the southeast corner of Section 29, T8S, R8E; thence north 1 mile; thence east  $1\frac{1}{4}$  miles; thence north  $9\frac{3}{4}$  miles to a point  $\frac{1}{4}$  mile north and  $\frac{1}{4}$  mile west of the southeast corner of Section 33, T6S, R8E; thence west  $\frac{3}{4}$  mile; thence north  $2\frac{5}{8}$  miles to a point  $\frac{1}{8}$  mile south of the northwest corner of Section 21, T6S, R8E; thence east  $2\frac{1}{4}$  miles; thence south  $1\frac{3}{8}$  miles; thence east  $1\frac{1}{2}$  miles; thence south  $1\frac{1}{4}$  miles; thence east 3 miles; thence south  $\frac{1}{2}$  mile; thence east  $2\frac{1}{2}$  miles, thence south  $2\frac{1}{2}$  miles; thence east 2 miles; thence south 1 mile; thence east 3 miles to the point of beginning.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

- A. The Joint Motion of Staff and Blue Valley requesting approval of the Stipulation and Agreement is granted.
- B. The application of Blue Valley Tele-Communications, Inc. for a certificate of convenience and authority to provide incumbent local exchange services in the Onaga and Westmoreland exchanges, pursuant to K.S.A. 66-131, is approved, as set out above.
- C. Blue Valley shall file tariffs 30 days before the effective date of the transfer to add Onaga and Westmoreland to its list of local exchanges and to create a new rate group for local rates.
- D. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2003 Supp. 77-529(a)(1).
- E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.**

Moline, Chr.; Krehbiel, Com; Moffet, Com.

Dated: DEC 27 2004

ORDER MAILED

DEC 27 2004

 Executive  
Director  
Susan K. Duffy, Executive Director

crh

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                      Brian J. Moline, Chair  
   Robert E. Krehbiel  
   Michael C. Moffet

In the Matter of the Joint Application of	)	
United Telephone Company of Kansas, Inc.	)	Docket No. 04-UTDT-781-CCS
(United) and Blue Valley Tele-	)	
Communications, Inc. (Blue Valley), Blue	)	
Valley O&W Telecom, Inc. (Blue Valley	)	
O&W) For Permission of United to Cease	)	
Operating as a Telephone Public Utility in	)	
its Onaga and Westmoreland Exchanges, to	)	
Grant Blue Valley a Certificate of Public	)	
Convenience for the Onaga and	)	
Westmoreland Exchanges and for Authority	)	
to Transfer Property, Plant and Equipment	)	
of United Located in the Onaga and	)	
Westmoreland Exchanges to Blue Valley	)	
and Complete all matters Incident to the	)	
Transfer.	)	

**ORDER APPROVING STIPULATION AND AGREEMENT  
AND CANCELING CERTIFICATE EFFECTIVE UPON THE  
CONSUMMATION OF THE SALE OF EXCHANGES**

NOW COMES the above captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On March 2, 2004, United Telephone Company of Kansas, Inc. (United), Blue Valley Tele-Communications, Inc. (Blue Valley), and Blue Valley O&W Telecom, Inc. (Blue Valley O&W) filed a joint application requesting a certificate of convenience for Blue Valley O&W, a subsidiary of Blue Valley, and approval of Blue Valley O&W's acquisition of the

Onaga and Westmoreland exchanges from United, and concurrently requesting the Commission cancel United's certificate of convenience and authority previously granted for the two exchanges. Blue Valley O&W's request for a certificate of convenience was docketed in Docket No. 04-BVTT-780-COC. United's request to cancel its certificates of convenience for the two exchanges, once the Commission granted Blue Valley O&W permission to acquire the two exchanges, was docketed in this docket.

2. On April 2, 2004, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene and Motion for Protective Order. On April 9, 2004, the Commission issued an order granting CURB's Petition to Intervene and issued a Protective Order.

3. On July 6, 2004, United, Blue Valley, and Blue Valley O&W made a joint filing in Docket No. 04-BVTT-780-COC to amend some of the terms of the original agreement between the parties. On November 23, 2004, United and Blue Valley filed another amendment removing Blue Valley O&W from the joint application. Blue Valley indicated in the November 24, 2004 amendment that it would acquire the two exchanges directly instead of via its subsidiary Blue Valley O&W.

4. On December 1, 2004, Commission staff (Staff) and Blue Valley filed a Joint Motion to Approve Stipulation and Agreement in Docket No. 04-BVTT-780-COC. United and CURB have indicated they do not object to the Stipulation and Agreement in that docket. On December 16, 2004, Staff and United filed a Joint Motion to Approve Stipulation and Agreement in this docket. Blue Valley and CURB have indicated they do not object to the Stipulation and Agreement in this docket.

5. The Commission has been presented with a Stipulation and Agreement to which there is no opposition. The Stipulation and Agreement represents a compromise by United and



Staff on several contested issues. The law favors compromise and settlement of disputes. *Bright v. LSI Corp.*, 254 Kan. 854, 858, 869 P.2d 686 (1994). The Commission finds that the Stipulation and Agreement is a fair and reasonable resolution of the issues in this proceeding. The Commission finds the methodology of sharing the gain on sale represents a reasonable balance between the positions of the parties. Further, the Commission finds that canceling United's certificate to provide incumbent telecommunications services in the two exchanges (along with granting Blue Valley a certificate to operate in Docket No. 04-BVTT-780-COC) is in the public interest. The Commission adopts the Stipulation and Agreement with the caveats noted in paragraph 6, below.

6. United shall file with the Commission applications for revisions to its tariffs 30 days before the sale closes to remove the Onaga and Westmoreland exchanges from its list of local exchanges and to add the two exchanges to its list of "sold" exchanges. Further, the Kansas Universal Service Fund Support (KUSF) Sprint receives for Onaga and Westmoreland will cease on the date the exchanges transfer to Blue Valley.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion to Approve the Stipulation and Agreement filed by United and Staff is granted and the Stipulation and Agreement is approved.

B. United shall file with the Commission applications for revisions to its tariffs 30 days before the sale closes to remove the Onaga and Westmoreland exchanges from its list of local exchanges and to add the two exchanges to its list of "sold" exchanges.

C. Further, the KUSF support United receives for the Onaga and Westmoreland exchanges will cease on the date the exchanges transfer to Blue Valley.

D. United's certificate of convenience and authority to provide incumbent local telecommunications services in the Onaga and Westmoreland exchanges is canceled effective upon the transfer of the exchanges to Blue Valley.

E. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2003 Supp. 77-529(a)(1).

F. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: DEC 27 2004

ORDER MAILED

DEC 27 2004

 Executive  
Director

Susan K. Duffy  
Executive Director

crh